

DIEMER, WHITMAN & CARDOSI, LLP  
JUDITH L. WHITMAN, #103385  
75 East Santa Clara Street, Suite 290  
San Jose, California 95113  
Telephone: (408) 971-6270  
Facsimile: (408) 971-6271

ATTORNEYS FOR  
MARK KESEL

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

|            |   |                           |
|------------|---|---------------------------|
| In re:     | ) | Case No. 10-41653 RJN     |
| MARK KESEL | ) | CHAPTER 11                |
| Debtor.    | ) |                           |
|            | ) | Date:                     |
|            | ) | Time:                     |
|            | ) | Place: 1300 Clay Street   |
|            | ) | Courtroom 220             |
|            | ) | Oakland, CA 94612         |
|            | ) | Judge: Randall J. Newsome |

**SUPPLEMENTAL DECLARATION OF JEFFREY I. KAPLAN IN SUPPORT OF THE  
APPLICATION TO EMPLOY JEFFREY I. KAPLAN OF KAPLAN GILMAN &  
PERGAMENT, LLP AS SPECIAL COUNSEL FOR DEBTOR UNDER 11 U.S.C. 327(e)**

I, Jeffrey I. Kaplan, declare as follows:

1. I am an attorney duly licensed to practice law in the States of New Jersey and New York and before the United States Court of Appeals, Federal Circuit. I am a partner of the firm of Kaplan, Gilman & Pergament, LLP and am proposed Special Counsel to Mark Kesel, a Debtor in this Chapter 11 case ("Debtor"). This supplemental declaration is made on my own personal knowledge, but in some cases based upon information and belief, and if called upon to testify I could and would competently testify thereto.

2. I was retained, prior to Debtor's bankruptcy filing, to represent Mark Kesel in this appeal. I

1 am also representing in this appeal Mark Kesel's co-defendants in the District Court case, Boris  
2 Kesil and Elik Gershenson and Multimetrixx, LLC.

3 3. Mr. Kesel and his co-defendants in the District Court case entered into an agreement, a true  
4 and correct copy of which was attached to my original declaration as Exhibit A (redacted to protect  
5 attorney-client privileged materials). Mr. Kesil and his co-defendants and I have agreed that the cost  
6 of the entire appeal will not exceed \$95,000, including disbursements incurred through our firm. To  
7 date, the amount paid to my firm is \$66,777.69. Of this amount NeoVision, LLC contributed  
8 \$30,000 and ADEM, LLC contributed \$36,777.69. Except for the sum of \$1,777.69 which was paid  
9 by ADEM, LLC in March 2010, all other funds were paid pre-petition in November and December  
10 2009 and were deposited in my client trust account. As work has been completed and billing for this  
11 work issued, funds covering the completed work have been transferred from my client trust account  
12 to my firm's general account.

13 4. I have been informed that the remaining fee for the review and analysis of the Opposition  
14 Brief and preparation and filing of the Reply brief will be paid by Egor Martovetsky, Boris Kesil's  
15 wife's brother-in-law.

16 5. I have been informed that no part of my fees were paid or will be paid by Mark Kesel or any  
17 of his co-defendants. I have also been informed that there is no expectation on the part NeoVision,  
18 LLC, ADEM, LLC nor Mr. Martovetsky that they will be repaid all or any part of the funds they  
19 contributed for the prosecution of this appeal.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is  
21 true and correct.

22 Executed this 29<sup>th</sup> day of April, 2010 at Woodbridge, New Jersey.

23  
24 \_\_\_\_\_/s/ Jeffrey Kaplan\_\_\_\_\_  
Jeffrey I. Kaplan  
25  
26  
27  
28